

1984 S.C. Op. Atty. Gen. 298 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-129, 1984 WL 159935

Office of the Attorney General

State of South Carolina

Opinion No. 84-129

November 5, 1984

*1 The Honorable Harry A. Chapman, Jr.

Member

South Carolina Senate

Post Office Box 10224, F.S.

Greenville, South Carolina 29603

Dear Senator Chapman:

Thank you for your letter of October 17, which Mr. Medlock has referred to me for reply. You have asked us to advise you whether you 'continue to serve and exercise the powers and responsibilities of the chairman [of the Senate Education Committee] pursuant to Section 2-1-80 until a new chairman of the Committee is selected?' It is our opinion that you do.

[Section 2-1-80 of the Code of Laws of South Carolina](#) (1976 as amended) provides in pertinent part as follows:

Every chairman of a committee of the House of Representatives or of the Senate who is ex officio a member of any commission or board shall continue to be a member of such commission or board after each general election and until his successor shall be appointed chairman of such committee of the House or Senate. . . . (emphasis added).

An example of where the chairman of a committee serves ex officio as a member of a State Board may be found at [Section 59-117-10 of the Code](#) wherein it is provided that the Chairman of the Senate Education Committee serves ex officio as a member of the Board of Trustees of the University of South Carolina.

In interpreting [Section 2-1-80](#), the primary objective is to ascertain and give effect to the Legislature's intent. [Banker's Trust of South Carolina v. Bruce](#), 275 S.C. 35, 267 S.E.2d 424 (1980). Such purpose and intent may be gleaned from the title of the Act. [University of South Carolina v. Elliott](#), 248 S.C. 218, 149 S.E.2d 433 (1966). [Section 2-1-80](#) was originally enacted as Act No. 163 of 1915, bearing the following title:

An Act to Provide for Chairmen of Certain Committees of the House or Senate Having Ex Officio Duties When Such Chairmanships Would Be Otherwise Vacant.

(emphasis added). It is evident from the title that the Act's purpose was to ensure that no vacancy occur in certain committee chairmanships during the transition period after a general election; the Act sought to preserve continuity in the chairmanships of legislative committees where, as is often the case, the chairman, by virtue of that position, holds a seat on a state board or commission. A notable example is the Budget and Control Board where the Chairman of the Senate Finance Committee and House Ways and Means Committee, as well as the Governor, Treasurer and Comptroller General all hold a position on the Board by virtue of their other offices. See, [Elliott v. McNair](#), 250 S.C. 75, 156 S.E.2d 421 (1967); [Ashmore v. Greater Greenville Sewer District](#), 211 S.C. 77, 44 S.E.2d 88 (1947).

It is well recognized in this State that the General Assembly is not convened year round whereas State boards and commissions do meet and function all year. Accordingly, since the reorganization of some legislative committees and the selection of a committee chairman traditionally do not occur until well after the general election, it is apparent that the General Assembly saw a need to ensure continuity in the functioning of State boards and commissions. As the Supreme Court stated in [Bradford](#)

[v. Byrnes](#), 221 S.C. 255, 261, 70 S.E.2d 228 (1952), the purpose of the principle of a holdover in office 'is the continuity of governmental service and the protection of the public in dealing with [de facto] officers . . .'. By comparison, Section 2-1-85, enacted subsequent to [Section 2-1-80](#), seeks such continuity in a slightly different way, by providing that legislative members of state boards and commissions, as opposed to committee chairmen, continue to serve on such boards 'until their successors shall have been elected or appointed, and qualify.' When the two are read together, however, it is even more clear the General Assembly contemplated that committee chairmen, serving *ex officio* on State boards would hold over as members of those boards until their successors as committee chairmen were appointed. And where a statute provides that an officer hold over until a successor is selected and qualifies, such period is as much a part of the incumbent's term of office as the fixed constitutional or statutory period. 63 Am.Jur.2d, Public Officers and Employees, § 160.

*2 This Office has addressed similar situations in previous opinions. In Op. Att'y. Gen. No. 1215, dated October 30, 1961, p. 304, we stated, for example:

When a member of a Legislative Committee holds office by virtue of membership in the Legislature and subsequently ceases to be a member of the Legislature, he can be replaced as a member of such Committee upon the expiration of his term. Whether such member should be replaced rests in the discretion of the appropriate appointing officer.

The failure to appoint a successor for a member whose term has expired does not vitiate the proceedings of the Legislative Committee nor does the participation of such member in the proceedings of the Committee affect the validity thereof. In any event this is a matter which rests in the exclusive jurisdiction of the General Assembly.

(emphasis added).

More specifically, in another opinion, dated October 30, 1964, this Office addressed a situation similar to the one which you raise. There, a member of the House did not offer for reelection; his House term expired on the Monday following the general election. The legislator also served as a member of the House Committee on Interstate Cooperation whose members, by statute, served *ex officio* on the Commission on Interstate Cooperation. Section 1-17-10. The relevant statutory provision (Section 1-17-40) stated that the members of the House Committee were to continue to serve until their successors had been designated. The question addressed in the opinion was whether the member, even though his term had expired and he was no longer a member of the General Assembly, could continue to serve 'as a member of the Commission on Interstate Cooperation after the expiration of his term of office.' The opinion concluded that he could, stating:

Sec. 9-104 (now § 1-17-40) . . . contemplates that members of the Commission and the constituents committees thereof continue to serve until their successors are designated. If no successor is appointed by the Speaker of the House in the place and stead of Mr. Cabell upon the House Committee, it is my opinion that he continues to serve as a de jure member and, as such, may be reimbursed in accordance with the governing statute.

The very same reasoning of this opinion would apply in the circumstance you have outlined. [Section 2-1-80](#) is specific that all committee chairmen who *ex officio* serve as members of State boards and commissions 'shall continue to be a member of such commission or board after each general election and until his successor shall be appointed chairman of such committee of the House or Senate . . .'. (emphasis added). The words should be given their plain meaning and the legislative purpose fulfilled.

We would add that once a new Chairman of the Senate Education Committee is 'appointed chairman', the effect of [Section 2-1-80](#) is at an end. As our Supreme Court stated in [Langford v. State Bd. of Fisheries](#), 217 S.C. 118, 129, 60 S.E.2d 59, 64 (1950), 'immediately upon the appointment and qualification of [a] . . . successor [the officer] would have had no right to hold his office any longer . . .'

*3 In summary, we would advise that where the Chairman of the Senate Education Committee serves by law *ex officio* on certain boards and commissions, he would continue to so serve until a new Chairman is appointed. This is true even where the Chairman has not offered for reelection as a member of the General Assembly and his legislative seat is filled by his successor.

Such is the plain meaning of [Section 2-1-80](#) and fulfills the Legislature's purpose in ensuring continuity in the functioning of boards and commissions in this State.

If we can be of further assistance, please let us know. With kindest regards, I remain
Very truly yours,

Robert D. Cook
Executive Assistant for Opinions

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